

THIS OPINION IS NOT A  
PRECEDENT OF THE TTAB

Mailed: December 6, 2021

UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board

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*In re AAN Holdings, LLC*

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Application Serial No. 88130411

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Leslie C. Adams of Leslie Adams, P.A., for AAN Holdings, LLC.

Kathleen H. Schwarz, Trademark Examining Attorney, Law Office 123,  
Susan Hayash, Managing Attorney.

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Before Bergsman, Lynch and Lebow,  
Administrative Trademark Judges.

Opinion by Bergsman, Administrative Trademark Judge:

AAN Holdings, LLC (“Applicant”) seeks registration on the Principal Register of the proposed mark GOAT GREATEST OF ALL TIME (in standard characters) for “vodka,” in International Class 33.<sup>1</sup>

The Examining Attorney refused to register Applicant’s mark on two grounds:

- GOAT GREATEST OF ALL TIME is a slogan that does not function as a trademark to indicate the source of Applicant’s goods under Sections 1, 2, and 45 of

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<sup>1</sup> Serial No. 88130411 was filed on September 25, 2018, under Section 1(b) of the Trademark Act, 15 U.S.C. § 1051(b), based upon Applicant’s claim of a bona fide intention to use the mark in commerce.

the Trademark Act, 15 U.S.C. §§ 1051, 1052, and 1127; and

- GOAT GREATEST OF ALL TIME is merely descriptive under Section 2(e)(1) of the Trademark Act, 15 U.S.C. § 1052(e)(1).

Our citations to the examination record refer to the USPTO Trademark Status and Document Retrieval (TSDR) system by page number in the downloadable .pdf format.

## I. Preliminary Issue

This appeal was initially based on the Examining Attorney's sole refusal to register GOAT GREATEST OF ALL TIME on the ground that it is a slogan or term that does not function as a trademark. However, after reviewing the record, the Board remanded the application to the Examining Attorney because it appeared to us that in addition to the refusal already before us, "an issue not previously raised may render the mark of the appellant unregistrable."<sup>2</sup> Trademark Rule 2.142(f)(1), 37 C.F.R. § 2.142(f)(1).<sup>3</sup> That is, GOAT GREATEST OF ALL TIME may be a common, laudatory phrase that is merely descriptive of Applicant's vodka. *See In re Bos. Beer Co. L.P.*, 198 F.3d 1370, 53 USPQ2d 1056, 1058 (Fed. Cir. 1999) ("The proposed mark [BEST BEER IN AMERICA] is a common, laudatory advertising phrase which is merely descriptive of Boston Beer's goods [beer and ale].").

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<sup>2</sup> August 6, 2020 Order (9 TTABVUE).

<sup>3</sup> Trademark Rule 2.142(f)(1) reads as follows: "If, during an appeal from a refusal of registration, it appears to the Trademark Trial and Appeal Board that an issue not previously raised may render the mark of the appellant unregistrable, the Board may suspend the appeal and remand the application to the examining attorney for further examination to be completed within the time set by the Board."

After remand, the Examining Attorney issued a further refusal under Section 2(e)(1) of the Trademark Act, on the ground that GOAT GREATEST OF ALL TIME is merely descriptive and the issue is now before us. Nevertheless, Applicant asserts the descriptiveness issue “could have and should have been raised in the first office action.”<sup>4</sup>

In this case, a descriptiveness refusal is not clearly justified and could have been raised in an initial action. The TTAB merely remanded this case for consideration of the basis; the Board does not prosecute applications nor did the Board direct the examining attorney to enter a refusal. Based on the evidence, the new issue of descriptiveness is not justified and the first examination determination should not be disturbed with respect to finding that descriptiveness should not be cited against the application. This is further supported by the fact that no descriptiveness refusals were raised by the Trademark Office in any of the prior evidence submitted or the new, additional evidence submitted. This also evidences that the refusals are not warranted and the applicant in this case is being unjustly refused registration that is being routinely granted to other similarly situated applicants. The applicant is entitled to be treated fairly and equally under the trademark laws in the allowance or refusal to register a mark.<sup>5</sup>

Trademark Rule 2.142(f)(1) gives the Board the authority to remand an application on appeal back to the Examining Attorney to consider an additional ground to refuse registration that for any number of reasons the Examining Attorney may have overlooked (e.g., the Examining Attorney thought the failure to function refusal was so strong, the merely descriptive refusal was unnecessary). *See In re*

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<sup>4</sup> Applicant’s Supplemental Brief, p. 5 (12 TTABVUE 6).

<sup>5</sup> *Id.* at p. 6 (12 TTABVUE 7).

*Opryland USA Inc.*, 1 USPQ2d 1409, 1411 n.6 (TTAB 1986) (recognizing the Board’s right to remand the application to the Examining Attorney for consideration of an issue not previously raised); *In re Johanna Farms, Inc.*, 223 USPQ 459, 461 (TTAB 1984) (same).<sup>6</sup>

Here, the Examining Attorney reassessed the evidence, determined that the evidence supported a merely descriptive refusal, and issued the additional refusal. The Examining Attorney handled the issuance of the additional mere descriptiveness refusal in accordance with proper practice and procedure. While it would have been more efficient for the Examining Attorney to have included the merely descriptive refusal in the first Office action, our practice and procedure seeks to ensure that only registrable marks are registered.

## II. Evidence

THE AMERICAN HERITAGE DICTIONARY OF THE ENGLISH LANGUAGE (ahdictionary.com) defines “great,” inter alia, as “very good, first-rate” and “very skillful.”<sup>7</sup>

The Merriam-Webster Dictionary (merriam-webster.com) defines “of all time” as “that has ever lived or existed.”<sup>8</sup>

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<sup>6</sup> The Board normally will not remand an application for consideration of a requirement or ground for refusal if the examining attorney had previously made that requirement or refused registration on that ground and then withdrew it. *See In re Bed & Bars Ltd.*, 122 USPQ2d 1546, 1548 n.2 (TTAB 2017) (“[T]he Board normally will not remand an application for consideration of a ground of refusal if the Examining Attorney ... had previously refused registration on that ground and then withdrew the refusal.”).

<sup>7</sup> September 17, 2020 Office Action (TSDR 8).

<sup>8</sup> September 17, 2020 Office Action (TSDR 10).

THE AMERICAN HERITAGE DICTIONARY OF THE ENGLISH LANGUAGE (ahdictionary.com) defines GOAT, inter alia, as an abbreviation for “greatest of all time.”<sup>9</sup>

The Acronym Finder website (acronymfinder.com) defines GOAT, inter alia, as “greatest of all time.”<sup>10</sup>

The Grammarphobia blog (“Grammar, etymology, usage and more”) (grammarphobia.com) (July 22, 2016) discusses the origin of “G.O.A.T. (Greatest of All Time).

The word “goat” has been used in American sports since the early 1900s, first as a derisive term for a player responsible for a team’s loss, and later often in capital letters, as an acronym for “greatest of all time.” ...

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[T]he earliest example we could find for “G.O.A.T.” used to mean “greatest of all time” is from September 1992, when Lonnie Ali, Muhammad Ali’s wife, incorporated Greatest of All Time, Inc. (G.O.A.T.) to consolidate and license her husband’s intellectual properties for commercial purposes.

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The earliest example we could find for the term used an acronym is an album by the American rapper LL Cool J entitled “G.O.A.T. (Greatest of All Time),” released on September 12, 2000.

In “The G.O.A.T. track on the album, LL Cool J ... repeatedly says, “I’m the G.O.A.T.” (pronounced “goat”) and “the greatest of all time.”<sup>11</sup>

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<sup>9</sup> April 25, 2019 Office Action (TSDR 5).

<sup>10</sup> September 17, 2020 Office Action (TSDR 5).

<sup>11</sup> January 9, 2019 Office Action (TSDR 7-8).

The Bustle website (bustle.com) (October 21, 2015) discusses the meaning of “GOAT.”

What exactly can we define “GOAT” as? Let’s turn to our handy friend, the Urban Dictionary, to see if we can piece together the meaning of this slang term:

1. “An acronym for G.reatest O.f A.ll T.ime”
2. “Greatest Of All Time. Not a title that should be easily given out.”

By these definitions, the acronym GOAT should only be used to talk about those who are truly the greatest of all time.

– not just those who are “kind of great” or “approaching greatness.” ...

Why does this term matter? Because we should all aspire to the GOAT in what we do and how we live.<sup>12</sup>

The following articles refer to G.O.A.T. GREATEST OF ALL TIME, or a close variation thereof, as the best that ever was.

- Washington Post website (washingtonpost.com) (September 19, 2013)

Being a GOAT is nothing baaa-d

This week I thought we would look for GOATs.

What’s a GOAT? Sometimes people call the player who messes up to lose the game the goat.

But the GOAT that I mean is the GREATEST OF ALL TIME: G-O-A-T. So let’s find athletes competing these days who are the Greatest of All Time at what they do.

Consider New York Yankees relief pitcher Mariano Rivera.  
...

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<sup>12</sup> January 9, 2019 Office Action (TSDR 12).

Soccer star Abby Wambach this year set a record for the most career goals scored in international matches by either a man or woman. ...

Anyone who has a world record in the timed events in track or field or swimming can claim to be a GOAT.<sup>13</sup>

- Complex website (complex.com) (untitled and undated excerpt)

The acronym GOAT – GREATEST OF ALL TIME – gets thrown around rather casually these days, but we felt it was the right time to settle any and all arguments about who is truly THE god in eight of the most popular sports.<sup>14</sup>

- USA Today website (usatoday.com) (undated)

Just when did we all start using GOAT anyway?

We've all spent a lot of time throwing around the term "GOAT" these days, whether it's about Tom Brady or Michael Jordan or LeBron James or actual goats to represent the GOAT.

But a thought crossed my mind this week with all this "Greatest of All Time" talk: Just who's responsible for using GOAT? (cites Grammarphobia.com discussed above).<sup>15</sup>

- NFL website (nfl.com) (February 18, 2019)

G.O.A.T. of G.O.A.T.s: Ranking the best of the best in sports

Tom Brady has clearly ended all debate about his status of the G.O.A.T. (greatest of all time) in NFL circles by winning his sixth Super Bowl. Nobody disputes this. But here's the bigger question: Who is the G.O.A.T. of G.O.A.T.s? That is, who is the best of the best among the top athletes from a cross-section of popular sports? It's like "Top Gun." Maverick was clearly one of the best of the best, one of the elite (and I'm not talking Kenny Omega and the

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<sup>13</sup> January 9, 2019 Office Action (TSDR 10).

<sup>14</sup> January 9, 2019 Office Action (TSDR 9).

<sup>15</sup> January 9, 2019 Office Action (TSDR 5).

Young Bucks, baby). Be he wasn't "Top Gun," because that title belonged to Ice Man.<sup>16</sup>

- College Media Network website (collegemedianetwork.com) (April 24, 2019)

Is Mike Trout the GOAT?

The term G.O.A.T. (Greatest of All Time) is exclaimed more often than not, despite the slogan singling out an individual. While scrolling through Twitter, it seems as if there are multiple GOATs varying daily, with only a couple of consistent players. Due to popularity and opinionated discussions, the most concrete GOAT of a sport would be Wayne Gretzky for Hockey, and most likely Tiger Woods for golf. As for basketball, baseball, and football, it's near impossible for those sports to have a definitive GOAT.<sup>17</sup>

- Mercury News website (mercurynews.com) (April 24, 2019)

Survivor recap: GOATs vs. goats

But Wardog, Rick and Ron form the Unholy Alliance of GOATs (Greatest of All Time) and sit around like sultans, deciding who is the next to go.<sup>18</sup>

- WSFA 12 News website (wsfa.com) (April 23, 2019)

Escaped Goat Joins YMCA Runners Jog

As the joggers were heading back to the Downtown YMCA, they noticed a goat hoofing it right along side [sic] them. And she followed them all the way to the front door. ...

No kidding around. If you're going to be the G.O.A.T., short for **Greatest Of All Time** for those who haven't heard the phrase, you have put in the time.<sup>19</sup>

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<sup>16</sup> April 25, 2019 Office Action (TSDR 6-7).

<sup>17</sup> April 25, 2019 Office Action (TSDR 8).

<sup>18</sup> April 25, 2019 Office Action (TSDR 9).

<sup>19</sup> April 25, 2019 Office Action (TSDR 10).

- Los Angeles Sentinel website (lasentinel.net) (untitled and undated)

Pastor David E. Cross will close out his Easter Trilogy sermon series, “The Real G.O.A.T. – Greatest of All Time,” on Sunday, April 28, at 10:00 a.m.”<sup>20</sup>

- Duck Territory website (247sports.com) (untitled and undated)

The homecomings included Tennessee Titan starting quarterback Marcus Mariota, who was back at Autzen. The former Heisman Trophy winner’s name has become synonymous with the goat emoji on Oregon social media. That represents what Ducks fans revere Mariota as – the greatest of all time – or more simply the GOAT.<sup>21</sup>

- Tech Crunch website (untitled) (April 10, 2019)

Uber is reportedly making its S-1 public available tomorrow, according to Reuters. According to the IPO paperwork, Uber will sell around \$10 billion worth of stock, Reuters[?] sources say. If true, Uber’s IPO would be one of the G.O.A.T. (greatest of all time) in the tech industry since Alibaba’s 2014 IPO.<sup>22</sup>

- Urban Islandz website (urbanislandz.com) (untitled) (April 10, 2019)

Jennifer Lopez says Nas i[s] the G.O.A.T. in her book.

The Greatest Of All Time is always a major topic of discussion in hip hop, and Nas has almost always found himself in the argument when it comes to skills on the mic.<sup>23</sup>

- WBUR 90.9 website (wbur.com) (untitled) (November 23, 2018)

But even I, as a sports n00b, understand what the phrase “The Babe Ruth of X” means. Or as the kids today say, the GOAT – The Greatest Of All Time.

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<sup>20</sup> April 25, 2019 Office Action (TSDR 11).

<sup>21</sup> April 25, 2019 Office Action (TSDR 12).

<sup>22</sup> April 25, 2019 Office Action (TSDR 13).

<sup>23</sup> April 25, 2019 Office Action (TSDR 14).

The week, we focus on a GOAT you may have never heard of, an Italian man named Gino Bartali.

Bartali was a famous cyclist, who competed in the Tour de France in 1938 and 1948.<sup>24</sup>

- UMD Newman website (bulldogcatholic.org)

Series: Greatest of All Time

We all desire to be the greatest. The G.O.A.T. – greatest of all time. We are racing after collecting experiences and having an incredible life. But what really matters is not so much a person’s story as much as their character. Jesus will ultimately reveal (as the greatest of all time) what it really is to be the greatest.<sup>25</sup>

Applicant submitted copies of third party registrations consisting of GOAT or G.O.A.T GREATEST OF ALL TIME or GREATEST OF ALL TIME. We list below the five relevant third-party registrations Applicant provided:<sup>26</sup>

MARK	REG. NO.	GOODS
	6158903	Non-medicated soaps
THE G.O.A.T. GREATEST OF ALL TIME	6177557	Restaurant services
GREATEST COMIC STRIP OF ALL TIME	5303221	Clothing

<sup>24</sup> April 25, 2019 Office Action (TSDR 15).

<sup>25</sup> April 25, 2019 Office Actin (TSDR 16).

<sup>26</sup> April 4, 2019 Response to Office Action (TSDR 33-72); March 17, 2021 Response to Office Action (TSDR 8-23).

Applicant also submitted copies of pending applications. However, we do not consider the pending applications because pending applications are evidence only that the applicants filed the applications on a certain date; they are not evidence of use of the marks. *In re Toshiba Med. Sys. Corp.*, 91 USPQ2d 1266, 1270 n.8 (TTAB 2009); *In re Fiesta Palms LLC*, 85 USPQ2d 1360, 1366 n.7 (TTAB 2007); *Nike Inc. v. WNBA Enters. LLC*, 85 USPQ2d 1187, 1193 n.8 (TTAB 2007).

MARK	REG. NO.	GOODS
THE GREATEST OF ALL TIME	3935776	Paper products and clothing
“THE GREATEST FISH CATCHER OF ALL TIME”	3185847	Catalog and online retail store services in the field of fishing equipment

Applicant also submitted copies of third-party registrations for expressions such as HI!, HELLO, WHATS UP USA, HOW YOU FEELING TODAY, etc.,<sup>27</sup> purportedly to show that expressions more common than G.O.A.T. GREATEST OF ALL TIME may be registered.

### III. Whether GOAT GREATEST OF ALL TIME is merely descriptive.

Section 2(e)(1) of the Trademark Act precludes registration of “a mark which, (1) when used on or in connection with the [services] of the applicant is merely descriptive . . . of them.” 15 U.S.C. § 1052(e)(1). A term is merely descriptive within the meaning of the statute “if it immediately conveys knowledge of a quality, feature, function, or characteristic of the goods or services with which it is used.” *In re Chamber of Commerce of the U.S.*, 675 F.3d 1297, 102 USPQ2d 1217, 1219 (Fed. Cir. 2012) (quoting *In re Bayer AG*, 488 F.3d 960, 82 USPQ2d 1828, 1831 (Fed. Cir. 2007)); see also *In re TriVita, Inc.*, 783 F.3d 872, 114 USPQ2d 1574, 1575 (Fed. Cir. 2015).

We “must consider the mark as a whole and do so in the context of the goods or services at issue.” *DuoProSS Meditech Corp. v. Inviro Med. Devices, Ltd.*, 695 F.3d 1247, 103 USPQ2d 1753, 1757 (Fed. Cir. 2012) (emphasis added); *In re Calphalon*

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<sup>27</sup> April 4, 2019 Response to Office Action (TSDR 239-395).

*Corp.*, 122 USPQ2d 1153, 1162 (TTAB 2017). “Whether consumers could guess what the product is from consideration of the mark alone is not the test.” *In re Am. Greetings Corp.*, 226 USPQ 365, 366 (TTAB 1985). Rather, “the question is whether someone who knows what the goods and services are will understand the mark to convey information about them.” *DuoProSS*, 103 USPQ2d at 1757 (quoting *In re Tower Tech, Inc.*, 64 USPQ2d 1314, 1316-17 (TTAB 2002)).

This principle applies to word marks with multiple components as well.

In considering a mark as a whole, the Board may weigh the individual components of the mark to determine the overall impression or the descriptiveness of the mark and its various components. ... [I]f ... two portions individually are merely descriptive of an aspect of appellant’s goods, the PTO must also determine whether the mark as a whole, i.e., the combination of the individual parts, conveys any distinctive source-identifying impression contrary to the descriptiveness of the individual parts.

*In re Oppedahl & Larson LLP*, 373 F.3d 1171, 71 USPQ2d 1370, 1372 (Fed. Cir. 2004).

Finally, laudatory terms, those that attribute quality or excellence to goods or services, are merely descriptive under §2(e)(1) of the Trademark Act. *See DuoProSS*, 103 USPQ2d at 1759 (finding SNAP SIMPLY SAFER merely descriptive for “medical devices, namely, cannulae; medical, hypodermic, aspiration and injection needles; medical, hypodermic, aspiration and injection syringes”); *In re Nett Designs Inc.*, 236 F.3d 1339, 57 USPQ2d 1564 (Fed. Cir. 2001) (THE ULTIMATE BIKE RACK found to be a laudatory descriptive phrase that touts the superiority of Nett Designs’ bike racks); *In re Boston Beer Co. L.P.*, 198 F.3d 1370, 53 USPQ2d 1056 (Fed. Cir. 1999) (finding THE BEST BEER IN AMERICA so highly laudatory and descriptive as applied to beer and ale that it is incapable of acquiring distinctiveness).

Laudatory marks are a species of merely descriptive marks. If the purchaser perceives the mark as laudatory, then we will find the mark to be merely descriptive rather than inherently distinctive, and it, therefore, is unregistrable under Section 2(e)(1) absent a showing of acquired distinctiveness. “Marks that are merely laudatory and descriptive of the alleged merit of a product are also regarded as being descriptive ... Self-laudatory or puffing marks are regarded as a condensed form of describing the character or quality of the goods.” *DuoProSS*, 103 USPQ2d at 1759. *See also Hoover Co. v. Royal Appliance Mfg. Co.*, 238 F.2d 1357, 57 USPQ2d 1720 (Fed.Cir.2001) (NUMBER ONE IN FLOOR CARE is a generally laudatory phrase and, thus, is not inherently distinctive); *In re Positec Grp. Ltd.*, 108 USPQ2d 1161, 1173 (TTAB 2013) (SUPERJAWS merely describes a superior system for grasping and holding work pieces); *In re The Place Inc.*, 76 USPQ2d 1467 (TTAB 2005) (THE GREATEST BAR found to be laudatory and thus merely descriptive of restaurant and bar services).

Applicant has applied to register GOAT GREATEST OF ALL TIME without periods between the letters in the word “Goat” (i.e., G.O.A.T.). Applicant does not contend that the presence or absence of the periods alters the commercial impression of the proposed mark. We find that Applicant’s proposed mark makes essentially the same commercial impression with or without the periods especially because it appears before the explanatory term “Greatest of All Time,” and, thus, “Goat” does not appear in the abstract. *In re G. D. Searle & Co.*, 360 F.2d 650, 149 USPQ 619, 623 (CCPA 1963) (holding common descriptive term “the pill” generic despite addition of

quotation marks); *In re Litehouse, Inc.*, 82 USPQ2d 1471, 1474 (TTAB 2007) (“[The presence of the exclamation points in applicant’s mark [CAESAR!CAEASR!] does not suffice to negate the mere descriptiveness of the mark.”); *In re Vanilla Gorilla L.P.*, 80 USPQ2d 1637, 1639 (TTAB 2006) (noting that “the addition of punctuation marks to a descriptive term would not ordinarily change the term into a non-descriptive one”).

GOAT GREATEST OF ALL TIME is a laudatory term. As noted above, the Federal Circuit and this Board have held that other marks which arguably denote “high quality,” “excellence” and “superior quality” are laudatory and, thus, merely descriptive. *See e.g., In re Duvernoy & Sons, Inc.*, 212 F.2d 202, 101 USPQ 288 (CCPA 1954) (CONSISTENTLY SUPERIOR held laudatory); *In re Dos Padres Inc.*, 49 USPQ2d 1860 (TTAB 1998) (QUESO QUESADILLA SUPREME held laudatory); *In re San Miguel Corp.*, 229 USPQ 617 (TTAB 1986) (SELECT and its equivalent SELECTA held laudatory); *In re Inter-State Oil Co.*, 219 USPQ 1229 (TTAB 1983) (PREFERRED held laudatory); *In re Wileswood, Inc.*, 201 USPQ 400 (TTAB 1978) (AMERICA’S BEST POPCORN held laudatory). The term GOAT GREATEST OF ALL TIME is as laudatory, if not more so, than the marks in cases cited above.

As noted, Applicant made of record printouts of five Principal Register registrations of marks that include a variation of GOAT GREATEST OF ALL TIME, registered without disclaimers or under Section 2(f). Applicant argues that these registrations show an Office practice of allowing GOAT GREATEST OF ALL TIME

and other common phrases and expressions to register.<sup>28</sup> However, as expressly stated by the court in *In re Nett Designs, supra*, 57 USPQ2d at 1566, “[t]he Board must decide each case on its own merits. ... Even if some prior registrations had some characteristics similar to Nett Designs’ application, the PTO’s allowance of such prior registrations does not bind the Board or this court.” (Internal citation omitted). Also, the evidentiary landscape for the descriptiveness analysis likely differed at the time of these registrations, the earliest of which dates back to 2006.

We find that based on the current record, prospective consumers of vodka would readily understand that GOAT GREATEST OF ALL TIME is mere puffery alluding the high quality and popularity of the product. It immediately and intuitively conveys information that the vodka is the best of the best. Accordingly, because we have no doubt in the matter, we find that GOAT GREATEST OF ALL TIME is merely descriptive of vodka.

Because we have found G.O.A.T. GREATEST OF ALL TIME merely descriptive, we need not reach the merits of whether it functions as a trademark. *See Multisorb Techs., Inc. v. Pactiv Corp.*, 109 USPQ2d 1170 (TTAB 2013).

**Decision:** We affirm the refusal to register Applicant’s mark G.O.A.T. GREATEST OF ALL TIME under Section 2(e)(1) of the Trademark Act.

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<sup>28</sup> Applicant’s Brief, pp. 2-5 (12 TTABVUE 3-6).